

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Gopal & Others Vs. Damodar & & Others
(SB Civil Writ Petition No.629/1999)

SB Civil Writ Petition under Article
226 of the Constitution of India.

Date of order:

November 23, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. R.S.Mehta, for the petitioners.

Mr. Ajeet Bhandari, for respondents.

BY THE COURT:

Heard learned counsel for the parties.

2. Contextual facts depict that the land in question situated in Hindaun District Sawai Madhopur was granted by former Jaipur State to Kali Ram on the basis of Izara (Theka). The petitioners on the basis of possession that they were cultivating the land got entered their name in Jamabandi of Svt.2007 to Svt.2011. On the basis of sub-tenancy and pay land revenue the petitioners claimed to be entered in Khatedari. The application was dismissed by Tehsildar Hindaun in the year 1969. The appeal and revision filed by petitioners remained unsuccessful. The petitioner thereafter filed the suit which was dismissed by Assistant Collector Hindaun on February 20, 1984. The Revenue Appellate Authority vide order dated July 8, 1988 decreed the suit. But the Board of Revenue vide order dated June 10, 1997 allowed second appeal dismissed the suit of the plaintiff petitioners on the ground that vide order dated September 4,

1970 the Board of Revenue had already passed the order against the petitioners, therefore the principle of resjudicata applied. The review filed by the petitioners came to be dismissed vide order dated November 23, 1998. Against these orders that the petitioners have preferred instant writ petition.

3. Having scanned the material on record, I noticed that the application of the petitioner moved under section 19(2) of the Rajasthan Tenancy Act, 1955 was disposed of by the Tehsildar Hindaun on June 29, 1966 whereby khatedari rights of 10 biswas of land were given to the petitioners. The said order was confirmed by the Board of Revenue on September 4, 1970. In view of the said judgment the petitioner's subsequent suit was hit by principles of Resjudicata. In *Sulochana Amma Vs. Narayanan Nair* (AIR 1994 SC 152) their Lordships of the Supreme Court indicated thus:- (Para 6)

“The objects underlying Explanation VIII that by operation of the non obstante clause finality is attached to a decree of civil Court of limited pecuniary jurisdiction also to put an end to the vexatious litigation and to accord conclusiveness to the issue tied by a competent Court, when the same issue is directly and substantially in issue in a later suit between the same parties or their privies by operation of Sec.11. The parties are precluded to raise once over the same issue for trial.”

4. Since the issue of title of petitioners was already decided by the Board of Revenue and the same issue directly and substantially involved in subsequent suit, it could not be permitted to be raised. The Board of Revenue thus has not committed any illegality in the impugned orders. In *Sadhana Lodh Vs. National Insurance Co. Ltd.* (2003)3 SCC 524, their Lordships of Supreme Court defined the supervisory jurisdiction under

Article 227 of the Constitution of India as under:-

“The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

5. Resultantly the writ petition being devoid of merits stands dismissed without any order as to costs.

(Shiv Kumar Sharma),J.

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